

REMARKS

In response to the Office Action dated December 8, 2010, please enter the above amendments and following remarks, which accompany a Request for Continued Examination.

Claims 25, 28-34, 36, 38-42, and 46-49 stand rejected. Claim 48 has been canceled as substantially duplicative of claim 47. Claims 50-55 have been added to address further aspects supported by the initial disclosure at, for instance, paragraphs [0019]-[0028] and FIGS. 1-5. No new matter is being added.

Claim Objections

Claims 25, 46, and 49 were objected to for (presumably) using the term “or” in reference to the return panel(s). However, the claim language is drafted to account for the possibility of one or more return panels (e.g., located on one or both sides of a door). The language of claims 25 and 46 is believed to be clear as written, and the language of claim 49 has been amended (as shown) to clarify the possibility of one or more return panels (and tangentially to establish a consistent preamble). Notably, there is no blanket restriction against use of the term “or” in the claim language. See, e.g., MPEP § 2173.05(h)(II).

Applicant respectfully requests that the pending objection to claims 25, 46, and 49 be withdrawn. If Examiner has any further objections, a telephone interview to discuss the concerns is requested prior to the issuance of a subsequent Office Action.

Claim Rejections - 35 U.S.C. § 103

The Office Action does not establish a *prima facie* case of obviousness because it fails to provide a contextual analysis of each and every claim limitation. “The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in KSR noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit.”

MPEP § 2143. In addition, “[w]hen evaluating claims for obviousness under 35 U.S.C. 103, all the limitations of the claims must be considered and given weight.” MPEP § 2143.03.

The cursory remarks made in the Office Action appear (in at least one circumstance) to overlook the actual language of the pending claims by including more than one erroneous reference to a “non-sealed” gap, and by heavily relying upon disjointed rejections presented in the prior Office Action. Applicant appreciates that the instant Examiner is not the same examiner that issued the prior Office Action; however, Applicant respectfully requests continued thorough consideration of this application.

Independent claim 25 and dependent claim 28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over USPN 6,792,721 (“Montanari”) in view of USPN 999,858 (“Payne”). However, a combination of Montanari and Payne is inappropriate and insufficient. For instance, Montanari nor Payne teach a formation “adjacent the drain channel shaped to receive a foot of the return panel” as called for in claim 25. Montanari discloses panels that are suspended from shower walls that do not make contact with the shower tray. See, e.g., Montanari at 4:59-61. Payne vaguely teaches “buttons” (i.e., item 12) upon which panels rest. See, e.g., Payne at 2:80-85 and FIG. 8. Therefore, neither teaches the contextual claim language related to a shaped formation adjacent a drain channel that receives a foot of a return panel. The Office Action erroneously ignores this contextual claim language in applying Montanari and Payne.

Moreover, even if the references are assumed (for sake of argument) to teach every claimed element, the combination of Montanari and Payne is inappropriate. If “the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.” MPEP § 2143.01 (citing In re Ratti, 270 F.2d 810 (CCPA 1959)). Moreover, if “proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there

is no suggestion or motivation to make the proposed modification.” MPEP § 2143.01 (citing In re Gordon, 733 F.2d 900 (Fed. Cir. 1984)). The proposed modification of Montanari changes its fundamental operation and renders Montanari unsatisfactory for its intended purpose. Specifically, Montanari is based on the concept of providing an “enclosure or door and [a] shower tray [that] are mutually disconnected” such that there is “no contact between the shower enclosure, which is suspended from two lateral posts, and the underlying shower tray.” Montanari at 2:16-17 and 4:59-61. Thus, modifying Montanari with the buttons of Payne to directly engage the enclosure/door with the shower tray fundamentally alters the basic underpinnings of Montanari.

“A prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention.” MPEP § 2141.02 (citing W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540 (Fed. Cir. 1983)). Both Montanari and Payne teach away from the claimed “water drain gap between the foot of the . . . return panel and the shower base through which water may flow beneath the door and the return panel(s) to the drain channel” that “extends around or across the front side of the shower base beneath and exterior to the door of the enclosure and the return panel.” Specifically, Montanari and Payne teach the benefits of keeping water within the shower enclosure, and not directing water out of the shower enclosure to a drain channel that “extends around or across the front side of the shower base beneath and exterior to the door of the enclosure and the return panel.” Montanari cites the benefit of preventing “the escape from the shower cubicle even of minimal amounts of water.” Montanari at 1:65-66. Similarly, Payne states that “an upturned retaining edge 5[] serv[es] to . . . prevent the escape of water outward from beneath the lower edge of the screen.” Payne at 2:76-80. Therefore, both references teach away from any configuration purposefully designed to direct water outward from the shower enclosure.

For at least the above reasons, claim 25 is patentable over Montanari in view of Payne. Claims 28-34, 46, and 47, which depend from claim 25, are allowable at least

due to the chain of dependency. A timely notice of allowance of claims 25, 28-34, 46, and 47 is respectfully requested.

While the pending rejections of the above-noted dependent claims are generally moot, the following remarks highlight several additional, although not exhaustive, distinctions:

With respect to claim 31, it is noted that USPN 5,911,518 (“Jurek”) does not teach a “floor of the shower base [that] falls from a high point at a rear side of the shower base to the front side of the shower base,” as called for in claim 31. To the contrary, Jurek necessarily relies on the floor tilting toward a rear side (away from the entrance) such that a “water discharge gap 44” is formed between a side edge 17 and a lower edge 42. For this additional reason, claim 31 remains in condition for allowance.

With respect to claim 34, it is noted that USPN 6,178,571 (“McAllister”) can not be combined with Montanari without erroneously destroying the functionality of Montanari. For example, eliminating the peripheral rim (i.e., item 32) of Montanari completely eliminates the structure of the internal channel (i.e., item 34). As such, Montanari can not be properly combined with McAllister. For this additional reason, claim 34 remains in condition for allowance.

With respect to claim 46, it is noted that USPN 7,490,371 (“Torres”) teaches away from any suggestion in which the purported “step” of the integral formation would be combined to allow water to escape the “shower receptor.” Torres is specifically directed at a “shower receptor with improved control of moisture and trapped water.” See, e.g., Torres at Abstract. For this additional reason, claim 46 remains in condition for allowance.

With respect to claim 47, USPubN 2006/0182926 (“Lewis”) does not teach or suggest the claimed “water drain gap(s) between the foot of the return panel(s) and the

shower base [that] comprise(s) one or more water drain cut-outs integral in the shower base through said integral formation(s).” At best, Lewis teaches webbing (item 12) that “ensures that the stone-resin mix 102 flows quickly to all four corners of the tray” during manufacturing. See, e.g., Lewis at ¶ [0054]. Only with impermissible hindsight can Lewis be misconstrued to provide any suggestion for the contextual configuration called for in claim 47. For this additional reason, claim 47 remains in condition for allowance.

Independent claim 36 and dependent claim 39 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Montanari, Payne, and Jurek. However, this cursory combination is inappropriate and insufficient. Of initial significance, the Office Action makes no mention of the claimed “cut-out or cut-outs through said formation or formations,” which alone is enough to illustrate the lack of a *prima facie* case of obviousness. Therefore, Applicant respectfully requests that this rejection be withdrawn and independent claim 36 (and all dependent claims) be allowed.

Moreover, the bald conclusion presented in the Office Action ignores the contextual claim language calling for “said formations being between the periphery of the floor of the shower base and the drain channel.” None of the references teach or suggest such a configuration having formations between a periphery of a floor and a drain channel; therefore, none of the cited art is even available to cursorily support an obviousness analysis. In any event, as outlined above with respect to claim 25, a combination of Montanari and Payne is inappropriate.

For at least the above reasons, claim 36 is patentable over Montanari, Payne, and Jurek. Claims 38-42 and 49, which depend from claim 36, are allowable at least due to the chain of dependency. A timely notice of allowance of claims 36, 38-42, and 49 is respectfully requested

While the pending rejections of the above-noted dependent claims are generally moot, the following remarks highlight several additional, although not exhaustive, distinctions:

With respect to claim 39, it is again noted that Jurek does not teach a “floor of the shower base [that] falls from a high point at a rear side of the shower base to the front side of the shower base,” as called for in claim 39. To the contrary, Jurek necessarily relies on the floor tilting toward a rear side (away from the entrance) such that a “water discharge gap 44” is formed between a side edge 17 and a lower edge 42. For this additional reason, claim 39 remains in condition for allowance.

With respect to claim 42, it is again noted that McAllister can not be combined with Montanari without erroneously destroying the functionality of Montanari. For instance, eliminating the peripheral rim (i.e., item 32) of Montanari completely eliminates the structure of the internal channel (i.e., item 34). As such, Montanari can not be properly combined with McAllister. For this additional reason, claim 42 remains in condition for allowance.

With respect to claim 49, it is again noted that Torres teaches away from any suggestion in which the purported “step” of the integral formation would be combined to allow water to escape the “shower receptor.” Torres is specifically directed at a “shower receptor with improved control of moisture and trapped water.” See, e.g., Torres at Abstract. For this additional reason, claim 49 remains in condition for allowance.

Summary

Claims 25, 28-34, 36, 38-42, 46, 47, and 49-55 are patentable over the art of record, and a timely notice of allowance is respectfully requested for all of the pending claims.

As always, Examiner is encouraged to contact the undersigned if helpful in advancing the prosecution of this application.

Commissioner is hereby authorized to charge \$490 for a two-month extension to file this response, \$156 for the inclusion of 23 total claims, \$810 for the accompanying Request for Continued Examination, and any other fees that may be due to Deposit Account 17-0055.

Respectfully submitted,

JOHN HATRICK-SMITH

Dated: May 9, 2011

By: /Joel A. Austin/
Joel A. Austin
Reg. No. 59,712
Attorney for Applicant
Quarles & Brady LLP
411 East Wisconsin Avenue
Milwaukee, WI 53202-4497
(414) 277-5617